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through the negligence of the defendant, it was held that the husband's right of action was based on an injury to the person, and hence governed by the period of limitation prescribed by subdivision 3 of Section 340 of the Code of Civil Procedure. The language of the Code, "injury to, or death of, one caused by the wrongful act or negligence of another," was held to be broad enough to include the consequential injuries to the husband resulting from the injury to the wife. In arriving at this conclusion, the court followed certain New York cases.⁸

It has been suggested that the husband's right to damages in such a case is compound, and consists of diverse elements.⁹ It is made up of a right to damages for the loss of the society and comfort, for loss of services, and for such expense as may accrue to him by reason of the injury. It seems on principle, as well as on common law precedent, that such right of action is founded on the injury to the property rights of the husband. For instance, if the husband dies while his action for the loss of the wife's consortium is pending, it has been held that the right of action survives and vests in the administrators in so far as it rests upon a pecuniary loss to the estate of the husband.¹⁰

But while thus analyzed, the right of the husband to sue for the pecuniary loss caused by the wife's injury seems to be a property right, it does not necessarily follow that the decision in the principal case is wrong. The truth is that the sections of the Code of Civil Procedure dealing with the subject of the limitation of actions do not differentiate strictly between injuries to the person and injuries to property. It would be difficult to point to any section of the California statute of limitations which would include an injury to a property right of this kind. On the other hand, the language of subdivision 3 of section 340 of the Code of Civil Procedure, referred to by the Court, is broad enough to embrace the present cause of action. There is, therefore, no reasonable basis upon which to find fault with the Court's conclusion.

A. A.

Statute of Limitations: Marriage as a Disability: Right of Wife to sue alone for Personal Injuries.—Though the statute of limitations for personal actions in this State has always made an exception in favor of persons under disability, among whom it has mentioned married women, when their husbands are necessary parties plaintiff, the appellate courts seem not to have been called upon to refer to the portion of section 352 of the Code of Civil Procedure making this exception until the case of *Moody v. Southern Pacific Company*.¹

⁸ *Maxson v. Dela. etc. R. Co.*, (1889) 112 N. Y. 560. (It should be noted that this decision turns upon the peculiar language of the New York Statute).

⁹ *Maxson v. Dela. etc. R. Co.*, *supra*, 563.

¹⁰ *Cregin v. Brooklyn etc. Ry.*, (1880) 83 N. Y. 595, followed in *Foels v. Tonawanda*, (1892) 65 Hun 624, 20 N. Y. Sup. 447.

¹ (November 18, 1913) 17 Cal. App. Dec. 593.

No statute runs against a married woman upon an action for damages to person caused by the negligence or wrongful act of a defendant, but she may sue, either at any time during the marriage (her husband joining with her) or within the statutory period after the termination of the marriage. It is rather remarkable that this point should have been decided only after the legislature has declared that the husband is no longer a necessary party in such actions.²

What happens to the ancient judicial myth that the right of the wife to sue for personal injuries is community property, in view of the recent amendment allowing the wife to sue alone for such injuries?³ If she may sue alone, she certainly can control and manage this portion of the community property, notwithstanding that the husband has, in general, such management or control. Some ingenious person will doubtless suggest to the Court that the husband has a vested right in his wife's injuries, and that it was not competent for the legislature to take this right away. If the doctrine that an action for personal injuries to the wife was community property, ever had a shred of common sense to support it, we do not see how the ingenious person's argument would be met,—at least as to injuries incurred before the recent amendment.⁴ But, in truth, the doctrine is absurd, and, aside from some judicial dicta, can find no support.⁵ A person has no more property in a right to recover for a lost arm or leg, than he had in the arm or leg itself.⁶ Juristic thought must somewhere draw a line between persons and property. The damages, when recovered, are, no doubt, property, but prior to judgment, it would seem plain that the right of the wife is purely personal.

O. K. M.

Torts: Slander of Title.—To support an action of slander of title, it is necessary for the plaintiff to prove: (1) that the statements complained of were untrue; (2) that they were made with malice,—that is, without just cause or excuse; and (3) that the plaintiff has suffered special damage.¹ "Notwithstanding the current name, an action for this cause is not like an action for ordinary defamation; it is an action on the case for special damage sustained by reason of the speaking

² Statutes, 1913 p. 217, amending Code Civil Procedure, sec. 370.

³ In one case the Court sustains without adverse comment, the joinder of the husband's administrator in an action brought for the wife's personal injuries. Counsel contended that this joinder was error, because the wife was not even a proper party to an action brought on account of injuries sustained by herself! *Gomez v. Scanlan*, (1909) 155 Cal. 528, 530, 102 Pac. 12. The leading authority to the effect that the right to recover such damages is community property is *McFadden v. Santa Ana Railway Co.*, (1891) 87 Cal. 464, 25 Pac. 681.

⁴ *Spreckels v. Spreckels*, (1897) 116 Cal. 339, 48 Pac. 228, 36 L. R. A. 497, 58 Am. St. R. 170.

⁵ 1 California Law Review, 296.

⁶ 1 Law Quarterly Review, p. 281, citing Ulpian to the effect that no one is owner of his own limbs. "*Dominus membrorum suorum nemo videtur.*"

¹ Clerk and Lindsell on Torts, (6th ed.) p. 682.